

1 U.S. DEPARTMENT OF THE INTERIOR
2 U.S. FISH AND WILDLIFE SERVICE
3 PUBLIC HEARING
4 regarding
5 A PROPOSAL TO
6 DESIGNATE CRITICAL HABITAT
7 FOR THE THREATENED
8 ALAMEDA WHIPSNAKE
9 SAN RAMON MARRIOTT
10 2600 Bishop Drive, Salon E
11 San Ramon, California
12 THURSDAY, JUNE 1, 2000
13 6:00 P.M.
14 PRESIDING: BENJAMIN C. BIBB, Chief
15 Congressional Affairs
16 U.S. Fish & Wildlife Service
17 Pacific Regional Office
18 911 N.E. 11th Avenue
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20
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1	INDEX OF SPEAKERS	
2		Page
3	Cay Goude	4
4	Jason Davis	11
5	Roy Cornwell	19
6	Jim Gwerder	22
7	Robert Aldenhuysen	29
8	Jim Johnston	30
9	Roxanne Nielsen	33
10	Bill Morgan	35
11	Roxanne Lindsay	37
12	Rick Probert	38
13	Marguerite Kauble	40
14	Jeff Miller	42
15	Lawrence L. Costello	47
16	Jim Blickenstaff	49
17	Dr. Cheryl Morgan	52
18	Brian Mathews	53
19	Dennis Stefani	54
20	Al Spotorno	55
21	Peter Banke	57
22	Kent Stromsmoe	59
23	Tom Ford	60
24	Joseph Brenkle	63
25		

1	Laurie Brown	65
2	Laverne Spotorno	67
3	James Levy	69
4	Ron Gatti	70
5	Rick Young	72
6	James Hunter	73
7	John Banke	74
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 HEARING OFFICER BIBB: Please begin to take
2 your seats. We are now on the record. Good evening.
3 On behalf of the United States Fish & Wildlife Service,
4 I welcome you to this public hearing.

5 My name is Benjamin Bibb, and I'm with the
6 U.S. Fish & Wildlife Service's Regional Office in
7 Portland, Oregon. I will be serving as the presiding
8 officer for this hearing. Also with me this evening are
9 representatives from the U.S. Fish & Wildlife Service.
10 Cay Goude, to my right, the assistant field supervisor
11 of the Sacramento Fish & Wildlife office; and outside
12 this room, Pat Foulk, the assistant field supervisor,
13 also in the Sacramento Fish & Wildlife office.

14 There are other representatives of the U.S.
15 Fish & Wildlife Service here at today's hearing. You
16 will also find an information table just outside the
17 room with written and display materials about this
18 proposal, as well as Fish & Wildlife Service staff to
19 assist you and answer your questions.

20 At this point I would like to introduce Cay
21 Goude, to my right, who will make a statement about the
22 U.S. Fish & Wildlife Service proposal to designate
23 critical habitat for the threatened Alameda whipsnake.

24 CAY GOUDE: Hi. I'm the assistant field
25 supervisor over the Endangered Species and Environmental

1 Contaminants program within the Sacramento field office.
2 Our office's jurisdiction includes all counties within
3 the San Francisco Bay Area, as well as those in the
4 Central Valley. I am here today with other Service
5 representatives to hear testimony on the proposal to
6 designate critical habitat for the Alameda whipsnake.

7 The proposed designation was published in the
8 Federal Register on March 8, 2000, and copies are
9 available at the information table located in the back
10 of this room. It is our intent that any final action
11 resulting from this proposal be as accurate and
12 effective as possible, and towards that end we seek the
13 best scientific and commercial data available. We will
14 accept comments on the proposal until June 12, 2000, and
15 will base the final determination on testimony received
16 today as well as comments received by our office.

17 Critical habitat for the Alameda whipsnake
18 includes areas that support plant communities, such as
19 scrub, adjacent grasslands, and oak woodlands. Within
20 these plant communities, specific features needed by
21 whipsnakes include small mammal burrows, rock outcrops,
22 talus, and other forms of cover to provide for
23 temperature regulation, shelter from predators, egg
24 laying sites, and areas for hibernation. Critical
25 habitat areas also need to be able to maintain the

1 whipsnake's various prey species and adequate insect
2 populations for those prey.

3 The Alameda whipsnake was listed as a
4 threatened species under the Endangered Species Act in
5 December of '97. At that time the Alameda whipsnake was
6 afforded the protection of the Endangered Species Act
7 which prohibits any individual from engaging in
8 unauthorized activities that will harm listed wildlife.

9 Critical habitat is defined in Section 3 of
10 the Endangered Species Act as the specific areas within
11 the geographic area occupied by a species, at the time
12 it is listed in accordance with the Act, on which are
13 found those physical or biological features, one,
14 essential to the conservation of the species; and two,
15 that may require special management considerations or
16 protections. "Conservation" means the use of all
17 methods and procedures that are necessary to bring an
18 endangered species or a threatened species to the point
19 at which listing under the Act is no longer necessary.

20 The designation of critical habitat requires
21 federal agencies to consult with the Service on acts
22 they carry out, fund or authorize that might destroy or
23 adversely modify critical habitat. A critical habitat
24 designation has no effect on actions where a federal
25 agency is not involved. For example, a landowner

1 undertaking a project on private land that involves no
2 federal funding or permit. The vast majority of human
3 activities that require a consultation with the Service
4 due to critical habitat proceed with very little or no
5 modifications.

6 Under the Act, a critical habitat designation
7 establishes a geographic area that is important for the
8 conservation of a threatened or endangered species, and
9 may require special management considerations. However,
10 a designation does not affect landownership or establish
11 a refuge, wilderness reserve, preserve, or other special
12 conservation area. It does not allow government or
13 public access to private lands, and will not result in
14 closure of the area to all access or use. Rather, it
15 triggers the requirement that federal agencies must
16 consult with the Service on activities they take or fund
17 that might affect critical habitat.

18 During the listing process for the whipsnake
19 the Service determined that critical habitat designation
20 was not prudent for the species due to the lack of any
21 significant benefit beyond that conferred by listing.
22 Moreover, the Service believed that publication of
23 precise maps and description of critical habitat in the
24 Federal Register would make this snake more vulnerable
25 to incidents of collection, further contributing to its

1 decline.

2 The Service concluded that any benefit that
3 might be derived from the designation of critical
4 habitat for the whipsnake was outweighed by the
5 increased threat of collection. However, in a lawsuit
6 filed in federal court against the Service by the Center
7 for Biological Diversity and Christians Caring for
8 Creation, the plaintiffs contended the Service was in
9 violation of Section 4 of the Act which requires the
10 designation of critical habitat at the time the species
11 is listed.

12 In November of '99, the court dismissed the
13 lawsuit as a result of settlement agreement entered into
14 by the Department of Interior and the plaintiffs. Under
15 the terms of the settlement, the Service agreed to
16 submit a proposal to designate critical habitat for
17 publication by March 1st, 2000, and to make a final
18 determination by September 1st, 2000. The Service
19 submitted its proposal to designate critical habitat for
20 the whipsnake to the Federal Register on March 1st, and
21 it was published on March 8th, with a 60-day comment
22 period.

23 In the March 8th Federal Register the Service
24 proposed seven areas: In Alameda, Contra Costa, Santa
25 Clara and San Joaquin Counties as critical habitat.

1 While there is 406,708 acres of critical habitat
2 proposed within these seven units, not all of the land
3 within the units is significant enough to the Alameda
4 whipsnake to require federal agencies to consult with
5 the Service.

6 The Service will require consultation only in
7 those areas that contain the physical and biological
8 features necessary for the species' survival. Existing
9 features and structures such as various type of
10 development, buildings, roads, canals, railroads, large
11 water bodies, and other features not currently
12 containing or likely to develop these habitat components
13 are not considered critical habitat.

14 As Section 4 of the Act requires, the Service
15 will promptly hold at least one public hearing if any
16 person files a request within 45 days of the proposed
17 regulation. We received several requests from
18 individuals and organizations to hold this hearing. On
19 May 15th, we reopen the public comment period for
20 critical habitat designation until June 12th to
21 accommodate the hearing and provide additional time for
22 your input.

23 It is our intent that any final action
24 resulting from this proposal will be as accurate and as
25 effective as possible. Therefore, we solicit comments

1 or suggestions from the public, other concerned
2 government agencies, the scientific community, industry
3 or any other interested party concerning this proposed
4 rule.

5 We particularly seek comments concerning the
6 following: One, the location of any additional
7 populations of Alameda whipsnakes and the reasons why
8 any habitat should or should not be determined to be
9 critical habitat; two, additional information regarding
10 the validity of the primary constituent elements
11 described in the proposed rule; and three, additional
12 information regarding areas that may be essential as
13 travel corridors for connecting individual Alameda
14 whipsnake populations.

15 Any decision on the proposed action will take
16 into consideration the comments presented here or any
17 relevant information received by the Service by
18 June 12th, 2000. Such communication may lead to a final
19 regulation that differs from, or a withdrawal of, the
20 proposed designation of critical habitat for the Alameda
21 whipsnake.

22 The Endangered Species Act requires us to
23 designate critical habitat on the basis of the best
24 scientific and commercial information available, and to
25 consider the economic and other relevant impacts of

1 designating a particular area as critical habitat.

2 We may exclude areas from critical habitat
3 upon a determination that the benefits of such
4 exclusions outweigh the benefits of specifying such
5 areas as critical habitat. We cannot exclude such areas
6 from critical habitat when such exclusion will result in
7 the extinction of the species.

8 We will conduct an analysis of the economic
9 impacts of designating these areas as critical habitat
10 prior to a final determination. When completed, we will
11 announce availability of the draft economic analysis
12 with a notice in the Federal Register, and we will open
13 a 30-day comment period at this time.

14 I now would like to introduce Jason Davis, a
15 staff biologist in our Endangered Species Division who
16 will be giving a short presentation on The Alameda
17 whipsnake.

18 JASON DAVIS: Thanks, Cay. My name is Jason
19 Davis. I'm a Fish & Wildlife biologist with the U.S.
20 Fish & Wildlife Service. Heather Bell and I were the
21 primary authors of the proposed rule to designate
22 critical habitat for the Alameda whipsnake, and I'm
23 going to give a brief presentation on the biology and
24 life history of the snake.

25 The Alameda whipsnake, *Masticophis lateralis*

1 euryxanthus, is a member of the family Colubridae. It
2 is a group of snakes that are extremely fast moving. It
3 is a subspecies of the California whipsnake, Masticophis
4 lateralis. The Alameda whipsnake is a very slender
5 snake that measures between 3 and 5 feet in length. It
6 has a black dorsal surface with two yellowish orange
7 stripes that run down the length of its body. The
8 underside of the Alameda whipsnake is an orange-rufous
9 color that is quite striking, and has a very iridescent
10 striking color if it hits the right light at the right
11 angle.

12 In addition, the Alameda whipsnake is a highly
13 secretive species that occurs in very low numbers, and
14 is not likely to be seen even if it's actively being
15 looked for. There is another snake in the Bay Area that
16 it may be confused with, the common garter snake that is
17 also similar in appearance in that it's black in color
18 and has yellow, orange, or red stripes running down its
19 back. Let's see.

20 The Alameda whipsnake is strongly associated
21 with scrub and chaparral habitats. Within scrub
22 habitats, Alameda whipsnakes tend to prefer south,
23 southwest and southeast facing slopes as those aspects
24 tend to provide more open stands of chaparral or scrub.
25 Alameda whipsnakes typically prefer scrub canopy

1 closures of between 25 and 75 percent. As these provide
2 areas for basking and sunbathing while still maintaining
3 areas for cover against potential predators such as
4 red-tailed hawks.

5 The Alameda whipsnake is found in natural
6 habitats other than scrub or chaparral, if those
7 habitats occur in close proximity to scrub or chaparral,
8 including grasslands, oak savannah, riparian -- riparian
9 draws, or oak-bay woodlands. Rock outcrops are also a
10 very important component of Alameda whipsnake habitat,
11 as they provide shelter against predators. They provide
12 potential breeding sites, and they also tend to attract
13 large numbers of the whipsnake's primary prey which are
14 fence lizards.

15 The Alameda whipsnake is an extremely fast
16 snake that uses its speed to capture lizards and in this
17 case, the western fence lizard, as seen in the mouth of
18 the whipsnake. The Alameda whipsnake will also feed
19 upon other snake species, frogs, small birds, and
20 skinks. Let's see.

21 The distribution of the Alameda whipsnake:
22 The Alameda whipsnake occurs throughout Northern coastal
23 scrub and chaparral habitats in Alameda and Contra Costa
24 counties. It is also found in northern Santa Clara and
25 western San Joaquin counties when scrub or chaparral

1 habitats occur there. Habitat fragmentation has
2 created, I guess, the existence of five separate Alameda
3 whipsnake populations, and those are the Tilden-Briones
4 population, the Oakland-Las Trampas population, the
5 Hayward-Pleasanton Ridge population, the Mt. Diablo
6 population, and the Sunol-Cedar Mountain population.

7 If you were to look at just an ordinary road
8 map of the East Bay area, you could probably figure out
9 where the five populations occur. They generally occur
10 in between the major urban centers of the East Bay, and
11 they're divided by the major highway systems that kind
12 of crisscross the Bay Area. This map here shows the
13 7 critical habitat units that were proposed in the
14 recent proposed rule to designate critical habitat. The
15 first five units also correspond to the five populations
16 that I just mentioned, and -- let's see.

17 The first population is the Briones -- or the
18 Tilden-Briones population which occurs south of
19 Highway 4. It occurs east of the city of Richmond, and
20 it occurs -- it occurs west of Highway 680, and north of
21 Highway 24 which is not showing up here.

22 The Oakland-Las Trampas population occurs
23 south of Highway 24. It occurs east of the city of
24 Oakland. It occurs west of Highway 680 and north of
25 Highway 580.

1 The Hayward-Pleasanton Ridge population occurs
2 south of Highway 580. It occurs east of the city of
3 Hayward. It occurs west of Highway 680, north of Niles
4 Canyon Road or Highway 84.

5 The Mt. Diablo population is centered on
6 Mt. Diablo State Park and the scrub habitats that
7 radiate away from the park.

8 The fifth population, the Sunol-Cedar Mountain
9 population occurs south of Highway 580 in the city of
10 Livermore. It occurs east of the city of Fremont and
11 Highway 680, and it also extends south into northern
12 Santa Clara County and into western San Joaquin County.

13 Another important point -- or note on this map
14 is Units 6 and 7 are important to the Alameda whipsnake,
15 as they provide important areas of connecting four
16 separate populations, and I guess the importance is that
17 it will maintain genetic connectivity between those four
18 populations.

19 The Alameda whipsnake is threatened by a
20 number of factors. The primary one being habitat
21 destruction due to urban development and associated road
22 construction and highway construction. Urban
23 development tends to attract urban adapted mammalian
24 predators of the Alameda whipsnake, including feral and
25 domesticated cats, dogs, skunks, opossums and raccoons.

1 Overgrazing can be a problem for the Alameda
2 whipsnake as whipsnakes tend to avoid areas that provide
3 little to no cover, and a whipsnake is not going to be
4 found crossing over grassland to search for prey or to
5 go to other scrub habitats if there is no cover for them
6 to move through. The conversion of scrub or grasslands
7 to recreational facilities, including golf courses, is a
8 problem for the Alameda whipsnake, as these areas
9 provide little in the way of cover and do not provide
10 any habitat for the whipsnake's primary prey, being
11 lizards.

12 Additional threats to the Alameda whipsnake
13 include fire suppression that creates overgrown decadent
14 stands of scrub habitats. What we are seeing with the
15 encroachment of urban development into the wildland
16 interface is that local fire suppression agencies are
17 reluctant to allow natural wildfire to take place, and
18 so we are moving from a natural system that burns every
19 10 to 30 years to a system that hasn't burned in over
20 60 years. It provides extremely high canopy closure, no
21 opportunity for whipsnakes to bask in, and whipsnakes
22 tend to avoid those types of areas.

23 In addition, overgrown decadent stands of
24 scrub habitat also tend to have very high fuel loads,
25 and this may lead to a catastrophic wildfire event that

1 may decimate one or more whipsnake populations. That's
2 one of our concerns.

3 That concludes my presentation. If you have
4 any questions, I'll be in the back room, and I'll turn
5 the mike over to Ben.

6 HEARING OFFICER BIBB: Thank you, Jason and
7 Cay. We're going to wait a few seconds while they take
8 the table out of here.

9 (Off the record.)

10 HEARING OFFICER BIBB: This is a public
11 hearing under Section 4 of the Federal Endangered
12 Species Act, as amended. Notice of the public hearing
13 was published in the Federal Register on May 15th, 2000,
14 beginning on page 30951.

15 As Cay mentioned earlier, public comments on
16 this proposal will be accepted until June 12th, 2000.
17 After review and consideration of your comments and all
18 other information gathered during this comment period,
19 the Service will make a final determination on the
20 proposal.

21 The purpose of this hearing is to receive your
22 comments on the proposal. Comments on all aspects of
23 the proposal are very important and will be carefully
24 considered. Because of the importance of your comments,
25 it is necessary that we follow certain procedures here

1 this evening.

2 If you want to present comments at this
3 hearing, please register at the table outside this room
4 by filling out a form like this (indicating). When you
5 register, indicate any organization that you're
6 representing in your comments today. When you are
7 called to present your comments, please come forward to
8 a microphone in the front, begin your presentation by
9 stating your full name, spell it for the record, and
10 indicate if you represent an organization.

11 This is an informal hearing, and therefore you
12 will not be questioned or cross-examined in connection
13 with your comments. Your comments or questions are
14 being recorded by the reporter to my left to preserve
15 them for the record. Please keep in mind, however, that
16 the reporter will not record any statements from the
17 audience or statements which are made to the audience.
18 Comments must be made directly into the microphone,
19 facing the front of the room.

20 Instead of presenting oral comments here
21 today, or in addition to oral comments, you may submit
22 comments in writing. Written comments may be submitted
23 to the staff at the registration table outside this
24 room, or they may be mailed to Field Supervisor,
25 Sacramento Fish & Wildlife Office, U.S. Fish & Wildlife

1 Service, 2800 Cottage Way, Suite W-2605, Sacramento,
2 California 95825.

3 This address is also available at the
4 registration and information tables outside the room.
5 Written comments will be accepted through
6 June 12th, 2000. Written comments will also be given
7 the same consideration as oral comments presented here.

8 At this point we're ready for our first
9 speaker. Roy Cornwell, please come forward to the
10 microphone, state your name, spell it for the record,
11 identify who you represent, and begin your comments.

12 ROY CORNWELL: I'm Roy Cornwell. I live in
13 Livermore. I represent a ranching family with a ranch
14 east of Livermore. I've left my remarks out at the desk
15 so they were already recorded. The Endangered Species
16 Act is once more a surprise to the public --
17 C-o-r-n-w-e-l-l.

18 The Endangered Species Act is once more a
19 surprise to the public with a more outrageous than usual
20 critical habitat designation. We, the affected
21 landowners, were not directly notified in 1997 when the
22 decision was made to list the Alameda whipsnake, nor
23 were we included in the 1999 settlement discussions with
24 the Center for Biological Diversity, and the other
25 non-governmental organizations, commonly called NGOs.

1 An NGO is not accountable to the voters. It
2 has no real legal standing. The decision involving
3 these NGOs is made behind closed doors in collusion with
4 the FWS. Those doors excluded the public. That public
5 is here in front of you with a lot of questions.

6 One would think the affected citizens directly
7 concerned would be considered first, rather than some
8 distant environmental group with absolutely no stake in
9 the land. Suddenly confronted with a lengthy federal
10 order, the landowners are shocked. Seems to be the
11 normal FWS operating procedure, but to designate 400,000
12 acres covering in part a heavily populated urban area
13 without any evidence of serious scientific study borders
14 on the ludicrous.

15 ESA in Section 3, subpart 5, (a) to (c),
16 definitions, states that the critical habitat shall not
17 include the entire geographical area which can be
18 occupied by the species, but only requires the use of
19 the best available. See Section 4(b), paragraph 2.

20 Just for example, Alameda County with 471,016
21 acres has about 24 percent of its area in dedicated
22 parks; an area of 113,280 acres. The other counties in
23 the affected area have comparable park areas. Much of
24 this park area in Alameda County, and in the other
25 counties as well, consist of the oak and chaparral with

1 rock outcroppings that make desirable habitat for the
2 whipsnake.

3 No consideration of using this permanently
4 preserved area was apparently considered. The public
5 does not even have access to quite a bit of the
6 designated parkland. There are large areas in the park
7 system which are lacking maintenance funds, are off
8 limit to the public, so why wasn't this large area
9 considered? The approach of the FWS is to use the
10 shotgun method and hit everybody below the belt.

11 Science, and indeed the ESA itself, has been
12 ignored in a headlong attempt to take over as much
13 private property as possible and make life exceedingly
14 difficult for the people who are trying to make a living
15 on the land.

16 We know that the Center for Biological
17 Diversity and the NGOs do not care even slightly for
18 injustice to the working folks who keep the open space
19 open by ranching and farming, but we have some hope,
20 admittedly small, that the so-called public service of
21 the FWS would have a little consideration. It's hard to
22 believe that FWS would reconsider the HCP into a real
23 scientific study, but they should at least try.

24 For example, including aforementioned park
25 area in trying to optimize the whipsnake habitat and

1 minimize the effect on people would seem to be glaringly
2 obvious. Carrying out this type of study in cooperation
3 with the people who are going to have to live with the
4 whipsnake would seem equally obvious.

5 HEARING OFFICER BIBB: Thank you,
6 Mr. Cornwell.

7 Our next speaker is Jim Gwerder. Mr. Gwerder,
8 if you could come forward, state your name, spell it for
9 the record, indicate if you represent anyone and begin
10 your statement.

11 JIM GWERDER: Good evening. My name is Jim
12 Gwerder. It's spelled G-w-e-r-d-e-r. I'm here tonight
13 on behalf of the Contra Costa County Citizens Land
14 Alliance. Thank you for the opportunity to provide
15 comment on the designation of critical habitat for the
16 Alameda whipsnake.

17 Contra Costa County Citizens Land Alliance, or
18 CLA, is a grass-roots property rights group formed in
19 the late 1980s. Our members are primarily located in
20 Contra Costa and east Alameda County and are
21 representative of the silent minority of Americans who
22 utilize their landholdings to provide food, fiber and
23 employment for our citizens, in addition to providing
24 care of the land for future generations.

25 Our concerns are as follows: Private land

1 mapping. First of all, Citizens Land Alliance is
2 particularly concerned with the proposed designation of
3 critical habitat on private lands. The designation of
4 critical habitat on private lands imposes no immediate
5 regulatory control over private property unless Fish &
6 Wildlife can demonstrate that the private property owner
7 would require a federal permit or federal funding to
8 carry out activities on that land.

9 On the other hand, designation of critical
10 habitat would publicize the perceived presence of
11 species on private property by issuing a very public
12 mapping overlay on private property. This publication
13 of the location of potential endangered species on
14 private land could subject private property owners to
15 increased exposure to litigation, liability, trespass,
16 or other activities that could interfere with privacy,
17 and with lawful and beneficial uses of property.

18 At the same time critical habitat designation
19 on private land provides little or no benefit to the
20 Alameda whipsnake, and for species that exist on private
21 lands this increased exposure of harm to land and
22 impediments to land use would discourage landowners from
23 seeking conservation solutions and cooperation with Fish
24 & Wildlife Service. Any protections to the Alameda
25 whipsnake that can be garnered on private land are

1 already provided through the Endangered Species Act by
2 listing.

3 By regulation, Fish & Wildlife has determined
4 that designation is not prudent when either of these two
5 conditions exist: Number 1, the species is threatened
6 by taking or other human activity, and identification of
7 critical habitat can be expected to increase the degree
8 of such threat to the species; or number 2, such
9 designation of critical habitat would not be beneficial
10 to the species.

11 A recent newspaper article reports that there
12 are fewer than a thousand Alameda whipsnakes in the East
13 Bay, and if this is true -- and as mentioned previously,
14 publication of their potential location will attract
15 collectors -- designation of critical habitat on private
16 land will not be beneficial to the whipsnake; therefore,
17 the designation of Alameda whipsnake on private lands is
18 not prudent.

19 Economic impact: The Endangered Species Act
20 requires Fish & Wildlife to analyze and take into
21 account the economic impacts of designating critical
22 habitat. Citizens Land Alliance demands that Fish &
23 Wildlife Service carry out a meaningful and supportable
24 economic analysis under Section 4(b)(2) of the Act.

25 Of most concern to CLA members is the economic

1 impact to their operations resulting from the effects of
2 such a public designation on property values. Also
3 apparent is that critical habitat designation will
4 necessarily impair or impede certain land uses that
5 would otherwise be allowable without the designation,
6 giving rise to economic considerations.

7 For example, we've already become aware of
8 firebreak restrictions on public lands due to potential
9 whipsnake location. Private landowners will feel an
10 economic burden when their adjacent properties go up in
11 flames. The public will feel an economic impact from
12 increased restrictions on public lands.

13 Another example to be studied is the effect on
14 public projects, and the increased cost of creating
15 those projects due to their inclusion in the critical
16 habitat area. The East Bay is feverishly dealing with
17 affordable housing and transportation issues. The
18 additional costs associated with the designation must be
19 studied and weighed to determine whether the designation
20 is prudent.

21 Environmental impact: Undoubtedly,
22 designation of critical habitat will create additional
23 regulatory impacts and management restrictions on public
24 lands and private lands with the substantial federal
25 nexus. Any necessary land use activities that will be

1 required to shift elsewhere causing new economic and
2 environmental burdens will have impacts to the human
3 environment.

4 Fish & Wildlife must address these impacts
5 under a national Environment Protection Agency analysis
6 and weigh the outcome in determining the prudence of the
7 designation.

8 Best available science: The secretary is held
9 to specific procedures for designating critical habitat.
10 Under the Endangered Species Act, the determination of
11 critical habitat must be made on the basis of the best
12 scientific data available, and after taking into
13 consideration the economic impact and any other relevant
14 impact of specifying any particular area as critical
15 habitat.

16 In 1992, the Alameda-Contra Costa Biodiversity
17 Working Group was formed by the California Department of
18 Fish & Game. Five other local agencies were part of
19 this working group, which map species and habitat data
20 over 227,000 acres in east Alameda and Contra Costa
21 County. Funding for the study was provided by the
22 participating agencies, and others, including the
23 National Biological Service.

24 In 1996, the working group attempted to
25 publish their study, replete with detailed biological

1 maps of the 227,000 acre area. Landowners protested,
2 and a subsequent stakeholder committee was formed to
3 hammer out a consensus report. Fish & Wildlife had a
4 seat on the committee, and its representative signed the
5 final report release last year. The final report did
6 not contain the original biological maps.

7 Through that process, much data was reviewed
8 by the participants on the committee. The Alameda
9 whipsnake was used as an umbrella species to represent
10 the major habitat type shrubland. The approximate range
11 of reported spatial requirements for the whipsnake was 5
12 to 21.5 acres.

13 The committee also learned that whipsnake
14 habitat use focuses on scrub within each home range,
15 although they do use adjacent grasslands with scattered
16 shrubs. In addition, the science presented to the
17 committee indicated that Alameda whipsnakes are not
18 migratory, and that they use the same home range year
19 after year.

20 The committee also discussed the concept of
21 habitat corridors, and it was acknowledged in the final
22 report that in the world of science, even this concept
23 is disputed. It is apparent that available scientific
24 data was not the basis for the proposed critical habitat
25 boundaries. Instead, a broad brush was used to include

1 the 400,000 plus acres as critical habitat for the
2 Alameda whipsnake.

3 The maps produced by the original biodiversity
4 working group covered Map Unit 4 and Map Unit 5 of the
5 proposed critical habitat designation. These
6 biodiversity working group maps indicated an estimated
7 5 percent of the 227,000 acres as shrubland or potential
8 whipsnake habitat. Yet, the lines drawn for map's Units
9 4 and 5 include an estimated 80 percent of that same
10 area as critical habitat for the whipsnake.

11 This leads CLA to conclude that the same
12 overreaching methods were used in determining the other
13 map unit boundaries of this critical habitat proposal.
14 Fish & Wildlife must reevaluate its proposed critical
15 habitat boundaries based on sound supportable science.

16 Authority to designate: Fish & Wildlife has
17 substantial authority to regulate federal land under the
18 authority granted by the Constitution in the Endangered
19 Species Act. However, this federal land use authority,
20 which stems from Article 4, Section 3, Clause 2, of the.

21 Constitution does not extend to private
22 property. Rather, any authority to regulate private
23 activities or private land use must derive from the
24 Commerce Clause of Article 1, Section 8.

25 In the absence of evidence that Alameda

1 whipsnake has any commercial utility, critical habitat
2 designation on state and private lands lacks the
3 requisite interstate commerce nexus. As a result, Fish
4 & Wildlife lacks the authority to designate critical
5 habitat on private lands.

6 And finally, HCPs: The summary requested
7 comments on Fish & Wildlife's handling of the approach
8 for handling habitat conservation plans, and in that
9 vein, CLA is very concerned about recent heavy-handed
10 tactics used by Fish & Wildlife to coerce public agency
11 participation in multi-species, HCPs, and east Alameda
12 and Contra Costa counties.

13 CLA is also concerned that the implementation
14 of HCPs in areas covered by a critical habitat
15 designation will provide the federal nexus necessary to
16 regulate and restrict uses on private property. Thank
17 you for your time and attention to these comments.

18 HEARING OFFICER BIBB: Thank you, Mr. Gwerder.

19 Our next speaker will be Robert Aldenhuysen.
20 I hope I'm pronouncing that correctly. Mr. Aldenhuysen,
21 if you could come forward, state your name, and spell it
22 for the record, indicate any associations you might
23 have. And also bear in mind, I have about 20 people to
24 speak tonight.

25 ROBERT ALDENHUYSEN: I have a short statement.

1 My name is Robert Aldenhuysen, A-l-d-e-n-h-u-y-s-e-n.
2 I'm an environmental coordinator with RMC Pacific
3 Materials. I'm sorry. I'm an environmental coordinator
4 with RMC Pacific Materials. We are a member of the
5 aggregate and ready-mix concrete industry. RMC Pacific
6 Materials sees itself as an environmentally responsible
7 company. We recognize the aims of the endangered and
8 threatened species protection, and we are familiar with
9 Fish & Wildlife requirements for species. We have an
10 HCP in one of our facilities for the threatened
11 California red-legged frog.

12 The reason we are here is because we operate
13 facilities in the proposed units of No. 4 and No. 7.
14 Our concerns would be with requirements as they relate
15 to our daily permanent and future permanent activities.
16 We appreciate this opportunity to comment during this
17 public hearing period, and will be submitting a written
18 statement before the deadline period. Thank you.

19 HEARING OFFICER BIBB: Thank you very much.
20 Our next speaker will be Jim Johnston. Mr. Johnston,
21 please come forward, state your name, spell it for the
22 record, indicate who you might represent, and begin your
23 statement.

24 JIM JOHNSTON: Good evening, everyone. My
25 name is Jim Johnston, J-o-h-n-s-t-o-n, and I'm the fire

1 chief of the Moraga-Orinda Fire District. We are
2 located just east of the Oakland-Berkeley Hills, and we
3 cover an area of approximately 63 square miles. We have
4 jurisdiction over an area and coincidentally is adjacent
5 to the Tilden-Briones, Oakland-Las Trampas, Caldecott
6 tunnel habitat areas that you've outlined in your
7 presentation tonight.

8 We are an organization that prides ourself in
9 working with other government agencies, and the reason I
10 say that is because to this point I am somewhat
11 surprised that we have not been -- attempted to have
12 contact from your agency regarding this most critical
13 issue that you have before you here tonight. Especially
14 with respect to the fact that your fear of catastrophic
15 fire could endanger the habitat for that endangered
16 species.

17 So I would hope that after this evening we'll
18 receive some contact from your folks, and we can start
19 working cooperatively together to have some mutual goals
20 in mind here.

21 I would like to first point out that -- and
22 this is in the letter that we have from our district
23 counsel, and I'm only just going to reiterate it here
24 tonight that -- it is our counsel's position that he
25 believes that we are exempt from the jurisdiction from

1 the Fish & Wildlife Service proposed rule here tonight.

2 However, notwithstanding that, and I'm not
3 going to go into detail of the legality of that, I'll
4 leave that to our attorney and the articulate letter
5 that he wrote to you folks, but I would like to approach
6 this more from a rational standpoint, and just point out
7 that we do a lot of fire mitigation and fuel reduction
8 management in our particular area. 90 percent of the
9 Orinda area is in a very high fire severity zone. This
10 is an issue that is very important to us.

11 We do a lot of clearance, weed abatement. We
12 do fire trailing in the area, and this all serves the
13 critical fire purpose in terms of preventing or
14 attempting to prevent the strong likelihood of a
15 catastrophic event that occurred in the Oakland Hills.
16 Not only would it serve to benefit, which you are
17 seeking in protecting that habitat for the snake, but as
18 well it would serve to protect our interests in
19 protecting the homes, the properties, the fields, and as
20 well the human life that would be endangered by such a
21 catastrophic fire.

22 We believe that in working together that --
23 and with our continued fire mitigation measures we can
24 kind of work together, and to the mutual satisfaction of
25 getting objectives that we are trying to work on here.

1 In closing, I would just like to say that
2 whether or not there is a legality with respect to
3 jurisdiction, I would certainly urge you to at least
4 revise your proposed rule to allow for either an
5 exemption or allow those fire departments or districts
6 who do fall under your jurisdiction to continue with
7 their mitigation measures to prevent a large
8 catastrophic fire which has occurred in recent history.
9 Thank you very much.

10 HEARING OFFICER BIBB: Thank you,
11 Mr. Johnston. Our next speaker will be Roxanne Nielsen.
12 Ms. Nielsen, if you would come forward, state your name,
13 spell it for the record, tell us who you represent, and
14 begin your statement.

15 ROXANNE NIELSEN: My name is Roxanne Nielsen.
16 N-i-e-l-s-e-n. I am speaking on behalf of Citizens for
17 Property Rights. We are a local chapter of the National
18 Organization of People for the USA. We have been at
19 various public hearings in the past: The U.S.
20 Department of Agricultural, U.S. Forest Service, and I
21 have never been denied free speech or have been
22 escorted, asked to leave by law officers before, as I
23 have been tonight by the U.S. Fish & Wildlife Service.

24 People for the USA is a grass-roots
25 organization of people in support of strong communities,

1 vigorous economies and healthy environments. The
2 message we propose is one of fairness. We have issues
3 with the recent decision of the U.S. Fish & Wildlife
4 Service to designate 400,000 acres, primarily in Alameda
5 and Contra Costa Counties, as critical habitat for the
6 Alameda whipsnake, as a result of a settlement reached
7 behind closed doors.

8 Many of our members own land now mapped as
9 proposed critical habitat, but none of our members knew
10 about the legal action or decision by the Fish &
11 Wildlife Service reaching a settlement with their land
12 until it hit the newspapers. Why are the landowners not
13 notified or participants? As it has been explained in
14 the introduction, this action has no effect on private
15 property. Therefore, the designation of critical
16 habitat should be confined to existing public lands.

17 The 157,000 acres of public land mapped should
18 be sufficient enough to meet the ESA goal, Endangered
19 Species Act goal, of conservation. We ask that the Fish
20 & Wildlife Service take into account areas already set
21 aside for open space, such as city greenbelts, parks,
22 East Bay regional parklands, as well as easements in
23 existence already for the preservations of other
24 species.

25 Agricultural activities on private land should

1 be exempt of regulation. The best way to preserve
2 habitat and open space in the affected area is to
3 encourage the long-term agricultural use of the land,
4 not to hinder it.

5 We ask that the Fish & Wildlife Service
6 reevaluate their map to not restrict the potential
7 developmental land that is urban area -- that this urban
8 area so desperately needs to alleviate the housing
9 shortage. To not do so is irresponsible planning and
10 only encourages sprawl. Thank you.

11 HEARING OFFICER BIBB: Thank you, Ms. Nielsen.
12 Our next speaker is W.G. Morgan. Mr. Morgan, would you
13 come forward, state your name and spell it for the
14 record, and indicate who you represent.

15 BILL MORGAN: Yes. My name is Bill Morgan,
16 M-o-r-g-a-n. I'm a board member of the East Diablo Fire
17 District, and I want -- our district isn't very familiar
18 with the details of this proposal, but on the surface,
19 as the chief of Moraga pointed out here, there's a --
20 implementing this plan is going to cause serious
21 problems on the public land, substantial areas in our
22 district -- our public lands, parklands, watershed
23 lands, et cetera.

24 All of these organizations have fire
25 management plans, and apparently it will be very

1 difficult or may be impossible for these agencies to
2 carry out these fire management plans because generally
3 what these are are methods of creating fuel breaks to
4 control wildfire, and our other concern is on the
5 private -- same concern on the private lands. We have a
6 fire trail program. We abate weeds when the fuel loads
7 become dangerous, and we just don't see how it will
8 work.

9 I think there are serious problems with this
10 proposal. The other thing, I would hope that there
11 would be some contact made with our district and the
12 other fire districts. Apparently, none of our fire
13 districts have been aware or haven't been on any mailing
14 lists for this, and if these catastrophic fires occur,
15 it's hard to see that that's very beneficial to this
16 habitat, and the snakes themselves.

17 So I hope we can get together and work out
18 some of these things, or preferably just drop this
19 proposal at this time. It seems that it's a bit of a
20 spur of the moment, unplanned, and unorganized. So
21 thank you.

22 HEARING OFFICER BIBB: Thank you, Mr. Morgan.

23 Our next speaker is Roxanne Lindsay.

24 Ms. Lindsay, please come forward, state your name for
25 the record, spell it, indicate who you represent, and

1 begin your statement.

2 ROXANNE LINDSAY: My name is Roxanne Lindsay.
3 That's L-i-n-d-s-a-y, and I'm here on behalf of Senator
4 Richard Rainey. Senator Rainey apologizes for not being
5 able to be here tonight himself.

6 He asked that I urge you to work with the
7 local fire districts. Much of the territory that we're
8 discussing tonight is in his senatorial district. He
9 would like very much to be informed of any activities;
10 if he can facilitate a meeting between the fire
11 districts, that would be fine, he would be eager to do
12 that, but just -- again, he urges that you work with the
13 fire districts to help mitigate the situation. Thank
14 you.

15 HEARING OFFICER BIBB: Thank you, Ms. Lindsay.

16 At this point we're going to take a brief
17 break of four minutes to allow the court reporter here
18 to take care of business. Thank you. We're now
19 adjourned.

20 (Whereupon, a break was taken from 6:53 p.m.
21 to 6:57 p.m.)

22 HEARING OFFICER BIBB: Our next speaker will
23 be Rick Probert. Mr. Probert, would you come forward
24 and state your name, spell it for the record, indicate
25 who you represent, and begin your statement.

1 RICK PROBERT: Good evening. My name is Rick
2 Probert. I'm the fire chief of the San Ramon Valley
3 Fire Protection District. My last name is spelled
4 P-r-o-b-e-r-t. I'm here tonight to also share with you,
5 as Chief Johnston has shared earlier, our deep concern
6 with regards to the proposed efforts that you have put
7 forth before us tonight.

8 The fire protection district that I represent
9 covers 155 square miles within this area, and covers two
10 units as described in the outline: The Mt. Diablo unit
11 and the Oakland-Las Trampas unit.

12 The fire district is extremely concerned about
13 several areas: One, as Chief Johnston alluded, we, too,
14 feel in our written correspondence by our legal counsel
15 that the U.S. wildlife -- Fish & Wildlife does not have
16 jurisdiction; and secondly, we also are -- are very
17 concerned about the lack of communication with the local
18 fire agencies. I think that's been made very clear by
19 Chief Johnston, and also the representative from East
20 Diablo and Senator Rainey's office.

21 While sitting here listening to the
22 presentation, I was struck by the two chiefs' concerns
23 of the biologists that made the presentation, and one
24 was the concern about the lack of natural fire behavior
25 within the area, and what that does or doesn't do with

1 regards to the Alameda County -- the Alameda whipsnake;
2 and secondly, about the -- about the concern that he had
3 with regards to the catastrophic, hot, working fire that
4 could destroy the habitat.

5 I can tell you that basically reading the rule
6 and the proposal that in both cases the proposal puts
7 fire agencies and limits them in their ability to do
8 mechanical mitigation, grazing mitigation, and also
9 prescribe burns, and basically hand ties us with regards
10 to protecting not only the citizens of our -- of our
11 valley and their lives and property, but also the
12 habitat that you have aptly pointed out needs to be
13 protected, and I think that as any good plan, this plan
14 needs to -- to -- to be reviewed, it needs to be looked
15 at from all angles, and it certainly needs to have the
16 input of the local fire agencies and the people who have
17 been there, done that.

18 I can assure you that in one area you've had
19 the single largest loss of homes in property in the
20 history of the United States in the -- in the Oakland
21 tunnel fire, and that is the Caldecott area. You cannot
22 ignore the impact economically, socially, or from a
23 habitat point of view with regards to that loss. It was
24 stated earlier that if a fire should occur, it's not
25 going to be if it occurs, it will occur.

1 My job as the manager of this organization is
2 to be able to stand up in front of the citizens that --
3 that have hired me and entrusted their most trusted
4 possessions, their lives and property, to be able to
5 stand there and tell them that we, as a fire agency,
6 have worked with both private and public landowners and
7 made sure that the highest possible protection can be
8 afforded to both them and the -- and the public
9 agencies, whether it's habitat protection or property or
10 life.

11 I urge you to -- to reconsider the rule, to
12 take the time to investigate all aspects of it, and to
13 work very, very closely with the public agencies. As I
14 said before, been there, done that, and we've worked
15 very, very hard to ensure a safe community not only for
16 the citizens, but for the beautiful area that we have.
17 Thank you very much, and I will leave off a written
18 comment outside.

19 HEARING OFFICER BIBB: Thank you, Mr. Probert.
20 I appreciate your comments.

21 Marguerite Kauble, please come forward, state
22 your name, spell it for the record, indicate who you
23 might represent, and begin your statement.

24 MARGUERITE KAUBLE: Hi. My name is Marguerite
25 Kauble. I'm going to quote a few phrases from Michael

1 Vandeman's letter to East Bay Regional Park District in
2 June of 1995. He talks about here that the Alameda
3 whipsnake needs direct sunlight, and farther down in his
4 letter it says that they need more brush as cover from
5 hawks, and things like that, and we can't have it both
6 ways. We can't have an overgrowth of growth and then to
7 have bright sunlight.

8 This country was founded on private property
9 rights, and in his letter he talks about these snakes
10 being individuals. Since when did animals and rocks
11 become individuals that think like human beings or on
12 the same level as a human being? He talks about
13 corridors. Corridors are places where people won't be
14 allowed to go. We already have a lot of land around the
15 San Francisco Bay Area that is supposed to be, quote,
16 public land, but people are not allowed to go there
17 anymore.

18 So if this is going to be corridors that
19 people won't be allowed to go in, how much land does
20 this -- does the Alameda whipsnake and the different
21 five populations need? What kind of management is going
22 to be needed for these Alameda whipsnakes? Will the
23 property owners be compensated? Will the property
24 owners still have to pay taxes? In the Constitution, it
25 says that -- in the Fifth Amendment -- that property

1 will not be taken unless just compensation.

2 There's a lot of other areas, I wanted to make
3 it short because there's other people that need to talk,
4 but we need to reform the Endangered Species Act. We
5 need to rethink this critical habitat that's going to
6 take private property owner's land, maybe mine someday.
7 Since when does the federal government or the Fish &
8 Game have jurisdiction over private property? Thank you
9 for letting me speak.

10 HEARING OFFICER BIBB: Thank you, Ms. Kauble.

11 Our next speaker is Jeff Miller. Mr. Miller,
12 if you could come forward, state your name, spell it for
13 the record, and any association you might have, and then
14 begin your statement.

15 JEFF MILLER: Hi. Jeff Miller. J-e-f-f,
16 M-i-l-l-e-r. I'm here tonight speaking on behalf of the
17 Center for Biological Diversity and the Alameda Creek
18 Alliance.

19 A lot of people see government conspiracy and
20 black helicopters in this critical habitat proposal, but
21 we're basically here tonight because we have a local
22 species, the whipsnake, which is going extinct, and
23 we're trying to do something about that, and ultimately
24 saving other species from going extinct is going to
25 benefit us, benefit our water quality, benefit our air

1 quality, and benefit our quality of life.

2 I just wanted to read some written comments,
3 but I just wanted to point out that the Fish & Wildlife
4 Services' charge with the conservation of the Alameda
5 whipsnake and conservation as defined in the Endangered
6 Species Act includes recovery of the species to the
7 point where it no longer needs the protections of the
8 threatened species designation.

9 In order to achieve recovery of the snake,
10 there must be significant habitat for current
11 populations to expand, and connectivity between the
12 populations must be maintained and increased, otherwise
13 the snake is never going to recover.

14 Additionally, because only preliminary
15 information is available regarding distribution
16 abundance, the precautionary principle should support as
17 broad a designation as possible. I would just like to
18 say that we enthusiastically support the proposed
19 critical habitat as currently proposed.

20 The Fish & Wildlife -- it appears that all
21 known, historic, and current occupied whipsnake habitat
22 has been included within the seven proposed units. I
23 just want to ensure that no suitable habitat will be
24 destroyed or adversely modified with the involvement of
25 federal agency through a mission or oversight in the

1 designation process, and I just would encourage the
2 agency to make sure that that's not going to happen.

3 The understanding in the proposal is that any
4 -- any features within the current boundaries which are
5 not suitable habitat for the whipsnake, such as
6 buildings, roads, reservoirs, existing features with no
7 habitat value will not be considered critical habitat,
8 and that's of course reasonable, but it seems like
9 anything that is suitable habitat or has the potential
10 to develop features which are necessary for the
11 conservation of the species should remain in the
12 critical habitat designation.

13 The burden of proof that no destruction or
14 adverse modification of habitat essentially recover the
15 whipsnake for any development activity or project
16 involving a federal agency or involving any federal
17 nexus should lie with the project proponent. It's going
18 to be too late once that habitat's been bulldozed or has
19 a golf course over it to go back and say, well, I guess
20 we did need that habitat to maintain a corridor here.

21 The burden of proof should be on the project
22 proponent, especially if there is a federal agency
23 involvement, and that doesn't mean these projects can't
24 go through, it just means they cannot destroy or
25 adversely modify that habitat.

1 I'd like to just comment on -- there's been a
2 number of comments that critical habitat will not
3 provide any additional benefits for the species, because
4 the species is already listed as a threatened species.
5 Well, the threatened designation prevents illegal take
6 of the species, which is not necessarily the same thing
7 as preventing destruction or adverse modification of
8 habitat. There's two different standards there, and I
9 think -- I think preserving the habitat is an important
10 distinction there.

11 Any -- we also would like to encourage any
12 future incidental take authorized under HCP to ensure
13 that the take -- the take authorized does not destroy or
14 adversely modify critical habitat.

15 It's one thing to authorize take of individual
16 snakes for a project where there's mitigations in place
17 or an overall habitat conservation plan that provides a
18 net benefit to the species or additional habitat being
19 designated. It's another thing to allow take which
20 allows destruction of habitat that's already been deemed
21 necessary to recover the species.

22 In terms of the potential threats to the
23 species due to the designation of critical habitat,
24 having looked through the Fish & Wildlife Service files
25 on the whipsnake, there is no documentation of

1 collecting of this species.

2 Ken McCloud, a Fish & Wildlife law enforcement
3 personnel, says the whipsnake does not appear to be
4 particularly popular among reptile collectors. Fish &
5 Wildlife Service Biologist Mark Jennings has noted that
6 stripe racers make more pets and are very hard to keep
7 in captivity.

8 The threat from the collectors is low, and the
9 scale of the maps that are published really don't give
10 any -- won't help potential collectors in any degree,
11 and conversely the designation of critical habitat may
12 prevent destruction of significant acreage of remaining
13 habitat for the whipsnake.

14 To address some of the economic issues and the
15 housing shortage, I think protection of the 7 core areas
16 for the whipsnake actually will have a great economic
17 benefit to the Bay Area. Preserving our open space
18 preserves not only our quality of life, but also
19 increases property values. Our open space attracts
20 tourism and recreation, which contributes to our
21 economy. There -- it is possible to provide housing for
22 people in the Bay Area through infill and redevelopment
23 without contributing to further sprawl.

24 I'd also say in response to the concerns of
25 the fire -- various fire departments, I think it is

1 certainly within their capability to find a way to do
2 fire control without destroying or adversely modifying
3 snake habitat. I don't think this is going to put a
4 noose around anyone's neck in terms of prevent fire.
5 Thank you very much.

6 HEARING OFFICER BIBB: Thank you, Mr. Miller.

7 Our next speaker will be Lawrence Costello.

8 At this point I have about 11 people to speak, and we
9 have 55 minutes. It's important that everybody be given
10 an opportunity to speak, including you, Mr. Costello.
11 Bear it in mind, be brief. Thanks.

12 LARRY COSTELLO: My name is Larry Costello,
13 C-o-s-t-e-l-l-o. I represent myself as a homeowner in
14 Dublin, and I have a background in molecular biology,
15 and actually did population studies for the Fish &
16 Wildlife Service up in Alaska back in -- about five
17 years ago.

18 I won't go into the details about how
19 important it is for various populations to mix for
20 diversity and for the survival of the species. If you
21 want those details, you can talk to me later, but some
22 of the things here tonight that were said have just
23 appalled me.

24 I live in Dublin and I feel that the quality
25 of my life would be improved by having this critical

1 habitat set aside. I see the freeways around the areas
2 that are choked with cars and the grasslands and
3 farmlands being converted into strip malls and parking
4 lots and housing developments.

5 Now, a lot of homeowners here talk about land
6 rights and preserving agriculture when they're the first
7 ones to sell their farm to a developer for millions of
8 dollars, and convert it into a strip mall, like what's
9 happened in the east part of Dublin, and to housing
10 developments. They also talk about being left out of
11 the democratic process by being turned away for this.

12 And as far as I know, this is a hearing to
13 study the proposal for critical habitat. We have not
14 done anything here today, but we're listening to
15 everyone. A lot of times I'm left out of the democratic
16 process when a planning board plans communities with
17 landowners more -- more of landowners in mind than with
18 the best interests of -- of the region.

19 I'm really tired of the backroom politics that
20 goes on a lot of times in the planning process. It
21 leaves out democracy, as far as I'm concerned. So I do
22 not agree with the fact that landowners say that they're
23 -- they're the poor victim here. As far as I know, the
24 snake didn't have anything to say when you took over its
25 land. It was here before you were.

1 So I just want to say that I support this as a
2 homeowner, and I hope we will continue to study in a
3 very logical scientific manner and not kowtow to
4 landowners who say they want to continue agriculture,
5 and then sell their property to developers. Thank you.

6 HEARING OFFICER BIBB: Thank you,
7 Mr. Costello.

8 Our next speaker will be Mr. Jim Blickenstaff.
9 Mr. Blickenstaff, if you will come forward, state your
10 name, spell it for the record, tell us if you represent
11 anyone, and begin your statement.

12 JIM BLICKENSTAFF: Good evening. I'm Jim
13 Blickenstaff. I'm with a Mt. Diablo group, Sierra Club,
14 and I wanted to just give you something that you're
15 probably already aware of; that there are a lot of
16 interests that are affected by the decisions you make,
17 and you're sure to hear all those interests, but the
18 bottom line is sometimes you have to look beyond those
19 interests to the ultimate interest of the people as a
20 whole, and that's what I ultimately hope you do, because
21 in terms of that bottom line the present system is not
22 working. The present system is not working.

23 These species continue to -- their habitat
24 continues to degenerate. They continue to become more
25 rare, and if you are unsuccessful in your process of

1 actually establishing a critical habitat, and the
2 mechanism for protection, they will continue on the road
3 to extinction. That is -- you can extrapolate this to
4 that conclusion if you're unsuccessful.

5 Like I said, the present system fails to solve
6 this problem. It piecemeals the problem, and it's hit
7 and miss. The studies are -- the results of studies of
8 habitat are sometimes questionable because of the
9 motivations of the people doing the studies, and the
10 enforcement after a study designates an area is also
11 questionable under the present system, because sometimes
12 the monitoring of that doesn't exist, and the net result
13 is a progression to the extinction of the species, and
14 in this case the whipsnake, but the process includes
15 other species, as you know. The red-legged frog, and
16 others. The process does the same thing to them.

17 So I -- I wanted to get to all the points
18 here. I want to also mention that critical habitat may
19 actually preclude the potential for illegal takings,
20 because there is a pressure with the present process of
21 doing some things prior to studies leading to
22 development that makes sure the studies don't find
23 anything.

24 There is a pressure for certain people to do
25 that through poisoning or other methods to make sure a

1 study clears away for development. Again, the process
2 that's going on now actually can encourage the
3 extinction in certain locations of the whipsnake, or
4 other species, because of this pressure to preclude a
5 discovery of it with a need to try to develop that land,
6 or whatever.

7 So ultimately I think there will be two
8 choices that the Fish & Wildlife Service can make a
9 decision on, and one is one that I hope will be the
10 outcome, that there will be a successful conclusion of
11 this process to have a mechanism in place that protects
12 the California Alameda whipsnake, and includes in that
13 process an understanding and appreciation of the vested
14 interests that are worried, but is not driven by those
15 vested interests.

16 The other choice you have is to throw up your
17 hands and say you weren't able to do it, and at least
18 admit that, and then we'll go from there. But I hope
19 you won't take that second one obviously, because I
20 think that would be a failure of your mandate to the
21 people of the United States. Thank you.

22 HEARING OFFICER BIBB: Thank you very much,
23 Mr. Blickenstaff.

24 Our next speaker will be Dr. Cheryl Morgan.
25 Dr. Morgan, if you could come forward, state your name,

1 spell it for the record, and indicate if you have any
2 associations with other groups, and start your
3 statement.

4 DR. CHERYL MORGAN: Good evening. My name is
5 Cheryl Morgan, M-o-r-g-a-n, and I'm primarily here
6 because I was looking at your study, and seemed curious
7 that a study so lacking in credibility would result in
8 any kind of decision, hearing or otherwise. As you
9 know, your study is somewhat deficient in statistical
10 sampling.

11 Then when I sat here and listened to your
12 description, it became rather obvious why we're having
13 this hearing. It has very little to do with the
14 whipsnake. Your maps duplicate and even supersede the
15 park acquisition plans in this area. So it becomes
16 quite obvious that this designation as a secondary
17 purpose of reducing property values, making acquisition
18 of parklands in this area much easier.

19 Tonight the participation in this meeting by
20 environmentalists, such as the man from Dublin, who have
21 absolutely no economic interest in this decision, but
22 who do have interest in seeing park acquisition
23 increase, their participation in this meeting doubles
24 the evidence that this has very little to do with the
25 whipsnake, and very much to do with reducing property

1 values so there's less private land, more public land in
2 Contra Costa and Alameda. Thank you.

3 HEARING OFFICER BIBB: Our next speaker will
4 be Brian Mathews. Mr. Mathews, if you could come
5 forward, state your name for the record, spell it,
6 indicate who you represent, and begin your statement.

7 BRIAN MATHEWS: Good evening. Thank you for
8 giving me an opportunity to comment tonight on the
9 designation of critical habitat for the Alameda County
10 whipsnake. My name is Brian Mathews, M-a-t-h-e-w-s. I
11 represent landowners, the National Wildlife Society, and
12 the Nature Conservancy. Although I'm affiliated with
13 the organizations, I do not support the designation as
14 laid out here today, the critical habitat maps as you've
15 stated.

16 I think that as a member of the scientific
17 community, we really believe that empirical data is
18 important to base decisions upon, and the -- the non --
19 the unsubstantiated or the lack of empirical data in
20 your study emphasizes this, and the fact that this was a
21 settlement decree that did not include the major
22 stakeholders is, I think, a sham.

23 Just a couple of other points: I think that
24 the -- the designation of critical habitat is a taking
25 of land without the prior benefit of the economic

1 analysis. I think that any designation ought to include
2 an economic compensation plan that identifies future
3 land values or future development and future land use
4 opportunities.

5 We also are concerned about the decrease in
6 the land value by this designation, particularly when
7 it's private property. We think that those designations
8 should only cover public use lands, and not include
9 private property in the designation. Thank you.

10 HEARING OFFICER BIBB: Thank you very much.
11 Our next speaker is Dennis -- I'm sorry, I can't
12 pronounce your name -- Stefani.

13 DENNIS STEFANI: Dennis Stefani. That's
14 S-t-e-f-a-n-i. I'm a homeowner in the area, and I
15 greatly support critical land usage that you've got in
16 front of you now. I think it's going to be beneficial
17 to the people that have property here right now.
18 Wherever there is a quality of life in the area it is
19 proven to be much more valuable. People that live in
20 areas of such nature always have higher quality and
21 higher prices for their value of their property.

22 I -- I think that what you're doing right now,
23 if you go ahead and follow this through, I want to
24 congratulate you for it. Don't let these other stories
25 that come along that say that -- the gentleman that has

1 a home in -- I think it was Dublin, if I'm not mistaken,
2 has no economic reason to be involved in this. I think
3 he does. He lives in the area. He's got property
4 rights, too. So he has as much opinion here, if not
5 more, than probably some of the people that got their
6 plan all laid out already.

7 I think it's good for the future. It's going
8 to be great for the younger people that come along to
9 have a place to be proud of. It won't be a repeat of an
10 L.A., like we're heading for already. Let's stop that.
11 So I'm in support of it, and I want you to do the same.
12 Thanks.

13 HEARING OFFICER BIBB: Thank you, sir.

14 The next speaker will be Al Spotorno.

15 Mr. Spotorno, if you could come forward, state your
16 name, spell it for the record, indicate who you
17 represent and begin your statement.

18 AL SPOTORNO: Good evening. My name is Al
19 Spotorno, S-p-o-t-o-r-n-o. Fourth generation landowners
20 of Alameda-Contra Costa counties. My grandchildren are
21 fifth generation on the land. I'm greatly disturbed
22 that a settlement was reached in this proposal
23 designating over 400,000 acres as critical habitat when
24 none of the property owners were advised of this
25 decision or participated in evaluating or coming to this

1 conclusion.

2 I'm really concerned with the broad-brush
3 painting of the maps, particularly Unit 5. I think you
4 owe it to the property owners to be more descriptive so
5 they know if they're critically impacted or not. One
6 cannot ascertain from these drawings what properties
7 actually are involved and what properties are not.

8 I question your definition of inappropriate
9 grazing. These lands from day one have always been used
10 for grazing. If they were habitat before when they were
11 used for grazing, why now is it critical to comment on
12 that? Seems to me there's a conflict in your definition
13 there, and I would like to know how and what's involved
14 in that description. I think you have plenty of public
15 land in these designated areas that more than compensate
16 for habitat. I think your alluding to 400,000 acres is
17 a vast extravagant definition of a total habitat area.

18 I have -- we have some real concerns here for
19 the ag industry, for the well-being of the people, and
20 for maintaining agriculture in this community, for
21 protecting the ownership of properties in properly
22 defining where this habitat should be. Is there any
23 compensation for properties that are impacted by this,
24 or are we just left to assume the burden for society
25 again? Thank you for your time.

1 HEARING OFFICER BIBB: Thank you, sir.

2 The next speaker will be Peter Banke.

3 Mr. Banke, if you could please come forward, state your
4 name, and spell it for the record, and begin your
5 statement.

6 PETER BANKE: My name is Peter Banke,
7 B-a-n-k-e. In 1995, a man, with the last name of
8 Vandeman, wrote a letter to the East Bay Regional Park
9 District. In the letter Mr. Vandeman said that
10 bicyclists and bulldozers pose a threat to the Alameda
11 whipsnake and that it should be a threatened species.
12 He also asked them to close down the road to Black
13 Diamond Mine on Mt. Diablo because a bicyclist ran down
14 what he said was the biggest whipsnake ever recorded,
15 and that a bulldozer ran over one of the snake's dens.
16 In response to his letter, Park Ranger Epstein said it
17 is impossible to close down the road, and not in my
18 power, and since I see many of them, they must be doing
19 fine.

20 I live on a ranch with my father, brother --
21 mother, and younger brother. I have -- we have seen
22 many whipsnakes on our ranch, and all of our neighbors'
23 ranches. The Alameda whipsnake and its subspecies,
24 California whipsnake, are everywhere on those ranches.
25 We have the red-legged French frog also which feeds on

1 the whipsnake.

2 In my opinion I say that -- I say just because
3 a couple of whipsnakes are ran over and because of a
4 couple of forest fires, it doesn't mean they're going to
5 go extinct. They say the whipsnake lives in areas of
6 sagebrush, which I can prove is not their only habitat.
7 I've observed them in ponds and I've also observed them
8 mating in a creek bed.

9 Obviously there has not been enough research
10 done on the Alameda whipsnake. I see so many whipsnakes
11 in so many different habitats. I believe they are not a
12 threatened animal. I can probably take ten whipsnakes a
13 year and successfully put them in ten different
14 locations and in different habitats. There are 150 --
15 1,500 and -- 100,000 -- 157,795 acres, that's 246 square
16 miles of habitat the snake lives on with no human threat
17 to its habitat.

18 Obviously this is a simple scheme to deprive
19 the property owners of their constitutional rights. If
20 you put this snake on the threatened species list, you
21 might as well put all snakes on the threatened species
22 list. Thank you.

23 HEARING OFFICER BIBB: Thank you, Mr. Banke.

24 Our next speaker will be Kent Stromsmoe.

25 Mr. Stromsmoe, if you could come forward, state your

1 name. Mr. Stromsmoe?

2 (No response.)

3 Our next speaker will be Tom Ford.

4 Is this Mr. Stromsmoe? Yeah, okay, sorry.

5 State your name, spell it for the record, indicate if

6 you represent anyone and begin your statement.

7 KENT STROMSMOE: My name is Kent Stromsmoe.

8 K-e-n-t, S-t-r-o-m-s-m-o-e. I'm a property owner,

9 apparently included within one of these areas, and

10 apparently I say because the quality of the mapping

11 leaves me in doubt whether or not my property is

12 included, and whether adjacent properties are included.

13 This concerns me greatly because I know that the

14 adjacent properties and probably mine should be

15 included.

16 So I -- my first comment is basically that I

17 can't make cogent commentary with regards to the

18 proposal for designation of critical habitat until such

19 time as you produce accurate mapping with boundaries

20 that are discernible and translatable to the ground, and

21 until you do so it just becomes impossible to

22 appropriately evaluate the proposal.

23 Although it is quite clear from the previous

24 speaker that he's identified very high quality habitat

25 that should be included as critical habitat for this

1 creature, and I'm glad that apparently such habitat is
2 included. Until such time as we do something about
3 species which suffer from shrinking habitats and whose
4 populations are in decline because of shrinking habitats
5 because of historic poor grazing practices, because of
6 development sprawl, and all the other issues related, we
7 have to recognize that any activity which further
8 reduces the habitat of species in decline because of
9 inadequate habitat need to be evaluated closely, need to
10 have consultation with the Service, and should be
11 designated in such a way that it does get that kind of
12 consultation. Thank you.

13 HEARING OFFICER BIBB: Thank you very much,
14 Mr. Stromsmoe.

15 We now have five more speakers and 30 minutes,
16 so please keep your statements to five minutes.

17 Mr. Ford, please state your name, and tell us who you --

18 TOM FORD: My name is Tom Ford, F-o-r-d. I
19 live at 7262 Tina Place in Dublin, which is close to the
20 ridge. I'm speaking for myself and also for -- at his
21 request, Mr. Dave Glen. We are both directors of the
22 Preserve Air Ridge Lands Committee, known as PARC,
23 longtime members. It's a very old organization,
24 30 years in the area. Mr. Glen is a representative for
25 Pleasanton on the board and I'm for Dublin.

1 We are, however, both speaking -- at my
2 attribution -- for ourselves, since we did not run this
3 by the Board. I think we are consistent with the
4 Board's directions and objectives, however. He lives in
5 the foothill area over the -- in an unincorporated area
6 near Tahama Falls, and the -- of course, the
7 Muller(phonetic) ranch.

8 He asked that I bring it to your attention
9 that a biologist did catch a whipsnake in that area,
10 near Muller ranch. They put a monitor on it. They
11 followed it. They followed its travels and they caught
12 it again and they removed the monitor.

13 So the -- they know the habitat area, and they
14 know that it does exist in the area. Apparently the
15 snake is quite prevalent in this large area of the
16 ridge, by other testimony we've heard there. This
17 presence is documented in the Muller Ranch ERI, Mr. Glen
18 stated.

19 Now, my comments: In an adjacent to the
20 Dublin ridge area, there are approximately 3,000 acres
21 that we're very concerned about. Schaefer Ranch has 500
22 acres, that's certainly habitats that are noted in the
23 map, and there's an additional 2,500 acres, an extended
24 planning area for Dublin which is the subject of the
25 November 2000 vote initiative to put any proposed

1 development to a citizen vote. Very democratic. It's
2 not taking land, and so on.

3 The public incentive for both Pleasanton and
4 Dublin I feel is quite consistent with many votes and --
5 rallies, and so on, to protect the ridge area, and in
6 fact Dublin in 1993 voted 80 percent to protect this
7 area from development, and to build in east Dublin, so
8 there weren't -- you know, no growth areas. They were
9 saying build east Dublin, don't build towards the ridge.

10 So the city is also cooperating with our
11 interests, and has put the Dublin voters' voice of ridge
12 lands initiative on the ballot for November. We expect
13 a strong majority for this initiative. So I think it's
14 safe to say both Dublin and Pleasanton are strongly in
15 favor of protection of the ridge, and thus the species,
16 whatever they be, particularly this whipsnake, since
17 it's so sensitive on the -- in the area.

18 So we have two very large walks of people in
19 the area that are favoring it. We are -- I might
20 emphasize -- in Dublin having workshops to study how we
21 would compensate the landowners, including Roxanne
22 Nielsen who spoke earlier for the adjustment or changes
23 to their property value for any reason, or taking --
24 that is buying or whatever, so that they are not being
25 unduly handicapped in the value of their land. It was

1 done fairly and above board and no backroom deals.

2 The city is very, very open about this, and
3 we're very -- doing a lot of research. I've attended
4 many of the workshops. So please be very successful at
5 this. I might also note that I have in the past had a
6 similar situation on some land that was affected by some
7 zoning. So I'm very sensitive to this, but raw land is
8 very speculative. There are no guarantees. It's like
9 stock.

10 So Dublin is currently studying how to do
11 this, and I think everything will work out fine. I hope
12 the snake survives. I hope the mitigations are very
13 effective. Thank you very much for the chance to speak.

14 HEARING OFFICER BIBB: Thank you, Mr. Ford.
15 The next speaker will be Joseph Brenkle. Mr. Brenkle,
16 if you could come forward, state your name, spell it for
17 the record, indicate who you represent, and begin your
18 statement.

19 JOSEPH BRENKLE: My name is Joseph Brenkle. I
20 think we have a ranch in the critical habitat for the
21 whipsnake, and tonight is the first time I ever heard
22 about it. I only heard about the meeting through the
23 citizen -- Resource Conservation District.

24 I kind of resent the fact that you can put our
25 land on -- certain restrictions on it without any

1 notification at all. You have no trouble finding our
2 land when you want to put a parcel tax on it, and I
3 don't see how -- we drove all the way up from Los
4 Angeles today to see this. I'm telling you folks, we're
5 going to fight this tooth and nail. If we -- we do not
6 think it is appropriate for people to -- to jeopardize
7 your use of your land for legitimate ranching interests,
8 and any possible economic advantage without any hearing,
9 without any say-so.

10 I don't know what to do about this, but this
11 is just plain wrong. We've had this ranch in the family
12 for a hundred years. You put three major highways
13 through the place, cut the ranch into three parts. You
14 had no trouble with that. Now you're beginning to
15 infringe on the land itself and what we can do with it.

16 The only useful thing that you can do with the
17 land is have cattle grazing, and that's becoming more
18 and more difficult, and it's economically impossible to
19 earn anything off of -- over a million dollar assessed
20 valuation, and get any income from the place. When the
21 ranch passes to the next generation, the estate taxes
22 will take it over. So it's just not appropriate that
23 this taking should occur in this matter. Thank you.

24 HEARING OFFICER BIBB: Thank you very much,
25 Mr. Brenkle.

1 The next speaker will be Laurie Brown. State
2 your name, spell it, indicate who you represent, and
3 begin your statement.

4 LAURIE BROWN: Hi. Laurie Brown, L-a-u-r-i-e,
5 B-r-o-w-n, and I represent myself. I'm here to
6 encourage and urge you to designate all 400,000 proposed
7 acres as critical habitat for the Alameda whipsnake. As
8 David Brauer(phonetic) said last week, the world is
9 burning and all I hear is the sound of violins.

10 We should be trying to save the earth at least
11 as fast as we are destroying it. You are the federal
12 body that can make a difference here. Please don't make
13 short-term economic growth and the leisure life, such as
14 golf courses, more important than your true mission. We
15 need you more than ever.

16 I feel sorry for the ranchers, and I
17 understand the predicament that they're in, but I think
18 that there's other ways, and I come from opposing a
19 development in Orinda called the Gateway Valley,
20 Montanera project, and the City of Orinda has taken a
21 10 million dollar gift from the developer.

22 So it cuts both ways, and I didn't feel any
23 sense of a democratic process going on with that
24 project. I'm a property owner, and I think that there's
25 value in open space, and that increases all of -- our

1 value of life and quality of life and our property
2 values. Please preserve what's ours, what's unique to
3 us, and what we place value on as a culture.

4 I live between the Caldecott and Gateway
5 Valley corridor. I hike that area at least two to three
6 times a year. Open space is a premium in the Bay Area.
7 The Audubon Society recently funded an economic study
8 that people are willing to pay a premium to live
9 adjacent to open space. In this overheated real estate
10 market, huge profits can be made without golf courses
11 and other leisure amenities.

12 When I read the Federal Register on this,
13 there was -- one of the things that said you were
14 soliciting comments on was existent values, and I know
15 that where I live, you've been really good about talking
16 about that this area -- the wetlands may qualify as
17 aquatic resources as a national importance, et cetera,
18 that it's surrounded by and connects part of a valuable
19 -- where greenbelt in open space in the East Bay Hills
20 is a narrow corridor for mountain lions to move through
21 and is suitable whipsnake habitat, but I would also like
22 to mention as an existence value, the geological value
23 of this area that I live near, between the Caldecott and
24 Oakland-Las Trampas corridor, and I can only quote from
25 a professor at UC Berkeley who says, "I would like to

1 ask, can you in any way consider that the Siesta Valley
2 is part of a small but inestimably valuable educational
3 resource for all Californians, and as much of the west
4 flank of the Valley displays a volcanic cut, et cetera,
5 et cetera.

6 Can you consider or calculate the immense loss
7 to the people of the Bay Area and California of such an
8 utterly unique, accessible, educational resource located
9 in the midst of literally hundreds of schools and
10 surrounding cities, and I'd like to submit those
11 geological papers. Thank you.

12 HEARING OFFICER BIBB: Thank you very much,
13 Ms. Brown.

14 Our next speaker will be Laverne Spotorno.
15 Ms. Spotorno, if you could come forward to the
16 microphone, state your name and spell it for the record,
17 indicate who you represent, and begin your statement.

18 LAVERNE SPOTORNO: My name is Laverne
19 Spotorno. S-p-o-t-o-r-n-o. I'm a private property
20 owner. I represent myself and my family. I didn't come
21 here tonight prepared to speak. I came prepared to
22 listen, but after hearing some of these comments I
23 couldn't leave without making my own statements. So I
24 appreciate being given the opportunity.

25 Before I begin my remarks, I would just like

1 to preface those remarks by saying that anyone who is a
2 homeowner in this area certainly must realize that they
3 wouldn't have a house to live in if it weren't for the
4 ranchers or the landowners who sold their land to a
5 developer so those homes could be built. If you
6 wouldn't be living in those homes, where would you be
7 living now?

8 I have five rhetorical statements or
9 questions: First of all, if you're proposing such
10 widespread habitat, then you might as well designate the
11 entire Bay Area as critical habitat for this animal.
12 Secondly, in all the materials that were distributed
13 here tonight, I have not seen or read one good single
14 reason for implementing such a radical means of
15 preserving this animal. Just what purpose does the
16 snake serve? Is it so critical as to interfere with
17 human life, the conduct of business, and threaten public
18 health and safety.

19 My third question: Where and when do you
20 humans take precedence? God put humans at the top of
21 the creation chain, and said that man was to be in
22 dominion of all. Number 4, what is the real agenda
23 here? As far as I'm concerned, this is nothing more
24 than a cover-up for other ulterior motives. Number 5,
25 what's happened to our private property rights that are

1 protected and guaranteed under the Constitution of the
2 United States? My last question: Does the federal
3 government have an agency to protect the human species?
4 Thank you.

5 HEARING OFFICER BIBB: Thank you very much,
6 Ms. Spotorno.

7 Our next speaker is James Levy.

8 Mr. Levy, if you would come forward. James
9 Levy, state and spell your name for us, tell us who you
10 represent, and begin your statement.

11 JAMES LEVY: My name is James Levy. That's
12 L-e-v-y. Speaking and representing the Alameda Creek
13 Alliance. I have resided in the San Ramon Valley for
14 30 years, and have seen the changes that have come to
15 this area. I'm not a wildlife expert. I do not know
16 for sure if this reptile is truly in danger of
17 extinction, but I am sure that the real estate
18 development industry in the tri-valley area is in no
19 danger of extinction. It may be a great wrong to hinder
20 the real estate development of this valley, but in my
21 small opinion I feel it would be a far greater wrong to
22 cause or assist the extinction of this small reptile.

23 The Alameda Creek Alliance strives to return
24 the endangered steelhead trout to Alameda Creek. Unit 5
25 of this habitat is critical to our cause and to the

1 steelhead in this creek, as well as the whipsnake.

2 Thank you for your time.

3 HEARING OFFICER BIBB: Mr. Levy, thank you
4 very much.

5 The next speaker is Ron Gatti. Mr. Gatti, if
6 you could come forward, state your name, spell it for
7 the record, let us know who you represent, and begin
8 your statement.

9 RON GATTI: Hello. My name is Ron Gatti.
10 It's spelled G-a-t-t-i. I represent myself and my
11 family as a property owner, and for the record, I just
12 wanted to state that to the best of my knowledge I have
13 not seen an Alameda whipsnake on my property or any
14 property that I've viewed in Bollinger Canyon, San
15 Ramon, California.

16 I request a field hearing for my property
17 which comprises of approximately 61 acres on parcel
18 No. 208210-007 so that this issue can be dismissed and
19 my property value will not be diminished.

20 I would also like to state that in my opinion
21 the mapping needs to be better and more specific because
22 it's really hard to tell which property it affects, and
23 it -- in this 400,000 acres it just sort of puts a cloud
24 in all the property in the area as to -- it limits it,
25 and I also happen to sell real estate, so it affects the

1 marketability. It also -- on disclosure issues, which
2 in turn affects the value, and -- you know, it may
3 diminish the value of the property.

4 Particularly Bollinger Canyon is already
5 surrounded primarily by Las Trampas regional wilderness
6 which comprises of approximately 4,000 acres, and then
7 you have another 10,000 acres of East Bay MUD watershed
8 land, which I would think would be already in that
9 critical habitat. So isn't that enough land to be
10 called a critical habitat area to cover the Alameda
11 whipsnake?

12 I've been here for almost 50 years, and it's a
13 great place to live, but if I had it my way, and I'm
14 sort of agreeing with the landowners that if it was up
15 to me, I would just keep it the way it was, you know,
16 with walnut orchards and pear orchards, because it's
17 such a great place to live other people have decided to
18 come and live here also.

19 I'm just wondering that if maybe some of the
20 critics most vocal about the landowners have really in
21 turn lived in this area that long, and maybe you're not
22 just the new arrivals, because it's just a hard issue to
23 deal with. It's a great place to live. It has good
24 jobs, but it's not fair also to limit the landowners'
25 rights because it affects their value, it diminishes

1 their value, and there should be some sort of mechanism
2 in this that allows some compensation for that.
3 Certainly a field study to determine one way or the
4 other if the Alameda whipsnake is on the property, and
5 if it isn't, then it should not be included in the
6 critical habitat. Thank you very much.

7 HEARING OFFICER BIBB: Thank you, Mr. Gatti.

8 Our next speaker will be Rick Young.
9 Mr. Young, if you could come forward, state your name,
10 spell it for the record, let us know who you represent,
11 and begin your statement.

12 RICK YOUNG: Hi. My name is Rick Young,
13 that's R-i-c-k, Y-o-u-n-g. I'm speaking as an
14 individual. I'm a law student at the University of
15 California at Berkeley. I came here, among other
16 reasons, to just kind of see how this process is
17 working. I think I've identified one problem is that
18 many people here do not have an understanding of exactly
19 how this process works and what these terms all mean. I
20 noticed you put out this Critical Habitat, What Is It?
21 handout that I'm holding in my hand, and people must be
22 either illiterate or not taking the time to read it,
23 because there's a lot of misconception and misperception
24 about what's happened here.

25 So I've looked it over. It looks pretty

1 simple. So I guess people aren't reading it. So maybe
2 you need to make this somehow more available, or maybe
3 make it a color version, so that it's a little more
4 appealing to people. I encourage you to somehow get
5 people to read this, because I think it would answer a
6 lot of their questions and allay a lot of their fears.
7 Maybe you can add some theme music to it, or something.
8 I don't know. Thank you.

9 HEARING OFFICER BIBB: Thank you, Mr. Young.

10 Our next speaker will be James Hunter.

11 Mr. Hunter, if you could come forward, state your name,
12 spell it for the record, indicate who you represent, and
13 begin your statement.

14 JAMES HUNTER: Hello. My name is James
15 Hunter. J-a-m-e-s, H-u-n-t-e-r. I'm a private citizen.
16 My comments will be very brief. I would just like to
17 say that private ownership is a human convention that is
18 actually culturally determined, and not everyone used
19 that in the same manner.

20 The government can totally place any
21 restriction on activities on private property, and they
22 do so on behalf of the public interest. The
23 preconceived idea of human -- humans being on the top of
24 some divine list of creation is totally limited to
25 western religion, and not everyone shares that

1 sentiment. Thank you very much.

2 HEARING OFFICER BIBB: Thank you very much.

3 At this point we have called all of the names of the
4 registered speakers. If there's anyone else who would
5 like to speak this evening, please register at the
6 registration table on one of these yellow pieces of
7 paper, and we will call you to the microphone in a few
8 minutes. At this point we will take a brief recess
9 until we have additional speakers and conclude this
10 hearing after that. Thank you very much.

11 (Whereupon, a break was taken from 7:53 p.m.
12 to 7:56 p.m.)

13 HEARING OFFICER BIBB: Will you please take
14 your seats now. We have one more person who is
15 registered to speak. Our next speaker will be -- please
16 take your seats, please. The next speaker will be John
17 Banke.

18 Mr. Banke, if you could come forward to the
19 microphone -- please take your seats, people.

20 Mr. Banke, if you could come forward and state your
21 name, spell it for the record, tell us who you
22 represent, and begin your statement.

23 JOHN BANKE: Good evening. My name is John
24 Banke, B-a-n-k-e. I live at 8540 Manning Road in Contra
25 Costa County. I represent Tassajara concerned citizens,

1 a portion of the people for USA.

2 I wanted to talk a little bit about -- I
3 didn't get to be here at the very beginning of the
4 meeting, so I don't know exactly what you said about how
5 many snakes are out there. I've heard no language from
6 anyone coming from the environmental side or anybody
7 who's talked about how many snakes are there.

8 I've observed this snake for 40 years of my
9 life. I see it all the time. I've seen them mate. I
10 see them all over the Bay Area. I've seen them in the
11 park grounds. I have extensive knowledge of running
12 cattle and grazing in the park ground, and San Francisco
13 Water Company, East Bay MUD. Everywhere I tread in this
14 area I have seen the whipsnake over the years. I've
15 never seen less, I've never seen more. Although on
16 wetter years you do seem to see more than you do on
17 drier years. Yet everybody says this is a snake that
18 wants to live in the desert and in the sagebrush. The
19 most common place I see it is in the grasslands and in
20 the wet valleys and the creek bottoms, and in the water
21 in the creeks.

22 No one has talked about this habitat. There's
23 been -- the habitat that I read on the internet that
24 supposedly all the scientists say, looks far from
25 accurate to me, from my personal experience of being out

1 in nature, every day, making a living as a rancher, as I
2 did for 35 years until now.

3 So I think that the United States Fish &
4 Wildlife is doing the public a great disservice by not
5 doing an accurate count on how many snakes are out here.
6 I do think that there is, as many people have said, over
7 170,000 acres of public ground, parklands, East Bay
8 Regional Park, land easements, San Francisco Water
9 Company, East Bay MUD, and so on, and so on. Las
10 Vaquero watershed, regional land bank, places where only
11 people can walk or ride horseback, no bikes, no
12 motorcycles, or anything like that.

13 That is quite a bit of habitat. I mean, I
14 think if you think that there's one snake for every five
15 acres or so, there's probably -- you know, a few hundred
16 thousand snakes out there in this area. I don't think
17 that a few hundred thousand snakes suggest that it
18 should be on the endangered -- headed towards being
19 endangered.

20 I've seen no sign of the snake being headed
21 towards endanger, and I think until Fish & Wildlife can
22 come up with that number and prove to the people of the
23 state of California that this snake is indeed threatened
24 and headed towards extinction, that no action should be
25 taken until that can be proven. Thank you.

1 HEARING OFFICER BIBB: Thank you, Mr. Banke.

2 At this point we've called everybody, all the
3 names of the registered speakers. By my watch it's
4 7:57. Is anyone else -- I gather no one else has
5 registered to speak.

6 So at this point we will end this hearing. I
7 want to thank you all for coming out. We'll take a very
8 good look at your statements. We appreciate the time
9 you've taken. It's been very informative. This hearing
10 is now closed. We are now off the record.

11 (Whereupon, the hearing was
12 adjourned at 7:00 p.m.)

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